



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201226037

APR 03 2012

Uniform Issue List: 402.00-00

T:EP:RA:T2

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Legend:

Taxpayer A	= XXXXXXXXXXXXXXXXXXXX
Plan B	= XXXXXXXXXXXXXXXXXXXX
Financial Institution C	= XXXXXXXXXXXXXXXXXXXX
Company D	= XXXXXXXXXXXXXXXXXXXX
Financial Institution E	= XXXXXXXXXXXXXXXXXXXX
Account F	= XXXXXXXXXXXXXXXXXXXX
Amount 1	= XXXXXXXXXXXXXXXXXXXX
Date 1	= XXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXXX:

This letter is in response to your request dated June 3, 2011, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 56, represents that she received a distribution from Plan B totaling Amount 1. Taxpayer A asserts that her failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 402(c)(3) was due to the failure of Financial Institution C to follow Taxpayer A's instructions. Taxpayer A also represents that Amount 1 has not been used for any other purpose.

Taxpayer A represents that she was employed by Company D and participated in Plan B, which was administered by Financial Institution E. Plan B was terminated on Date 1. On March 28, 2009, Taxpayer A telephoned Financial Institution C for instructions on how to complete a direct rollover to an IRA. Based on verbal instructions from a representative of Financial Institution C, Taxpayer A opened a new account, intending it to be an IRA. Due to the incorrect instructions received from a representative of Financial Institution C, the account created was a non-IRA account. Financial Institution C issued an account number which Taxpayer A used, on the same day, to complete the required Contract Termination Withdrawal form specifying that she had chosen the direct rollover option and would be rolling the distribution to her new IRA at Financial Institution C. Taxpayer A requested a check made payable to "Financial Institution C FBO Taxpayer A" with the new account number. On June 24, 2009, a distribution check in Amount 1 was mailed to Taxpayer A and on June 30, 2009, Taxpayer A mailed the check to Financial Institution C with instructions to deposit the check in her "individual rollover account". However, Financial Institution C deposited the funds in the non-IRA account. The mistake was discovered in early 2011 when Taxpayer A sought financial advice and a reallocation of her investments. Documentation submitted includes a letter from Financial Institution C recognizing the mistake and agreeing to reimburse the costs relating to the application for a waiver of the 60-day period.

Based on the foregoing facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amount 1 from Plan B.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under sections 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31)-1, of the Income Tax Regulations (Regulations) Q&A-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish timely rollover was due to the failure of Financial Institution C to follow her instructions to deposit Amount 1 in an IRA, which resulted in Amount 1 being deposited into Account F, a non-IRA account.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from Plan B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into a Rollover IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of Amount 1 into an IRA will be considered a valid rollover contribution within the meaning of section 402(c)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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Page 4

201226037

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXXXXXX (ID XXXXXXXXXXXXXXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,



Carlton Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose